

Public Chapter 422

SENATE BILL NO. 1792

By Herron, Dixon, Williams, Graves, Davis

Substituted for: House Bill No. 1922

By Fitzhugh, Maddox, Pinion, McDaniel, Godsey, Cooper, Pleasant, Haley, Hargett,
Goins, Patton, Ford, Fraley, Mumpower, White, Dunn, Walley, Beavers, Brooks, Boyer,
Roach

AN ACT To amend Tennessee Code Annotated, Title 49, Chapter 6, Part 10, to enact the
"Tennessee Student Religious Liberty Act of 1997".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 10, is
amended by adding the following new sections:

Section 49-6-1012. Tennessee Code Annotated, Sections 49-6-1012--
49-6-1017, shall be known and may be cited as the "Tennessee Student
Religious Liberty Act of 1997".

Section 49-6-1013. (a) The General Assembly finds the following:

(1) Judicial decisions concerning religion, free speech and
public education are widely misunderstood and misapplied.

(2) Confusion surrounding these decisions has caused some to
be less accommodating of the religious liberty and free speech rights of
students than permitted under the First Amendment to the United States
Constitution.

(3) Confusion surrounding these decisions has resulted in
needless litigation and conflicts.

(4) The Supreme Court of the United States has ruled that the
establishment clause of the First Amendment to the United States
Constitution requires that public schools neither advance nor inhibit
religion. Public schools should be neutral in matters of faith and treat
religion with fairness and respect.

(5) Neutrality to religion does not require hostility to religion.
The establishment clause does not prohibit reasonable accommodation
of religion, nor does the clause bar appropriate teaching about religion.

(6) Accommodation of religion is required by the free speech and free exercise clauses of the First Amendment as well as by the Equal Access Act (20 U.S.C. 4071 et seq.) and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

(7) Setting forth the religious liberty rights of students in a statute would assist students and parents in the enforcement of the religious liberty rights of the students and provide impetus to efforts in public schools to accommodate religious belief in feasible cases.

(b) The purpose of this act is to create a safe harbor for schools desiring to avoid litigation and to allow the free speech and religious liberty rights of students to the extent permissible under the establishment clause.

Section 49-6-1014. As used in this act unless the context otherwise requires:

(1) "Establishment clause" means the portion of the First Amendment to the United States Constitution that forbids laws respecting an establishment of religion.

(2) "Free exercise clause" means the portion of the First Amendment to the United States Constitution that forbids laws prohibiting the free exercise of religion.

(3) "Free speech clause" means the portion of the First Amendment to the United States Constitution that forbids laws abridging the freedom of speech.

(4) "Public school" means any school that:

(A) Is operated by the state, a political subdivision of the state, or governmental agency within the state; and

(B) Receives state financial assistance.

(5) "Student" means an individual attending a public school.

Section 49-6-1015. (a) A student shall have the right to carry out an activity described in any of subparts one (1) through four (4) of subsection (b), if the student does not:

(1) Infringe on the rights of the school to:

(A) Maintain order and discipline;

(B) Prevent disruption of the educational process; and

(C) Determine educational curriculum and assignments;

(2) Harass other persons or coerce other persons to participate in the activity; or

(3) Otherwise infringe on the rights of other persons.

(b) Subject to the provisions of subsection (a) of this section, a student shall be permitted to voluntarily:

(1) Pray in a public school, vocally or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate or speak on non-religious matters alone or with other students in such public school;

(2) Express religious viewpoints in a public school to the same extent and under the same circumstances as a student is permitted to express viewpoints on non-religious topics or subjects in such school;

(3) Speak to and attempt to share religious viewpoints with other students in a public school to the same extent and under the same circumstances as a student is permitted to speak to and attempt to share non-religious viewpoints with such other students;

(4) Possess or distribute religious literature in a public school, subject to reasonable time, place, and manner restrictions to the same extent and under the same circumstances as a student is permitted to possess or distribute literature on non-religious topics or subjects in such school; and

(5) Be absent, in accordance with local education agency attendance policy, from a public school to observe religious holidays and participate in other religious practices to the same extent and under the same circumstances as a student is permitted to be absent from a public school for non-religious purposes.

(c) No action may be maintained pursuant to this act unless the student has exhausted the following administrative remedies:

(1) The student or the student's parent or guardian shall state their complaint to the school's principal.

(2) If the concerns are not resolved, then the student or the student's parent or guardian shall make complaint in writing to the superintendent with the specific facts of the alleged violation.

(3) The superintendent shall investigate and take appropriate action to ensure the rights of the student are resolved within thirty (30) days of receiving the written complaint.

(4) Only after the superintendent's investigation and action may a student or the student's parent or guardian pursue any other legal action pursuant to this act.

(d) If a right of a student established under this section is violated by a public school, the student may assert the violation as a cause of action or a defense in a judicial proceeding and obtain appropriate relief against the public school. Any such action shall be brought in the circuit or chancery court where the violation occurred or where the student resides. Standing to assert a cause of action or defense under this section shall be governed by the Tennessee Rules of Civil Procedure and common law interpretations of such rules.

(e) A student prevailing in a claim brought against a public school for a violation of this section or an action brought by a public school against a student for conduct covered by this section shall be entitled to reasonable attorney fees, court costs, and the cost of bringing or defending the action.

Section 49-6-1016. (a) Nothing in this act shall be construed to affect, interpret, or in any way address the establishment clause.

(b) The specification of religious liberty or free speech rights in this act shall not be construed to exclude or limit religious liberty or free speech rights otherwise protected by federal, state or local law.

Section 49-6-1017. Nothing in this act shall be construed to support, encourage or permit a teacher, administrator or other employee of the public schools to lead, direct or encourage any religious or anti-religious activity in violation of that portion of the First Amendment of the United States Constitution prohibiting laws respecting an establishment of religion.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect on September 15, 1997, the public welfare requiring it.